

Cunningham



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Hope Industries, Inc.

**File:** B-236167

**Date:** November 20, 1989

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### DIGEST

1. The low offeror's product conforms to the salient characteristics of the brand name product, as listed in the solicitation, despite some differences in design between the two products, where industry literature establishes that the differences are immaterial and do not affect the ability of the low offeror's product to meet the solicitation requirements.
2. Where a request for proposals (RFP) requests offers on certain brand name products and lists specific salient characteristics of these products, other products which comply with listed characteristics can be offered, even though RFP did not contain "brand name or equal" clause, where RFP otherwise indicates that equal products could be offered.

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### DECISION

Hope Industries, Inc., protests the award of a firm, fixed-price contract to Kreonite, Inc., for various color print/film processors and associated manuals, technical data and spares under request for proposals (RFP) No. F42600-89-R-26237, issued by the Ogden Air Logistics Center, Hill Air Force Base, Utah. Hope alleges that Kreonite's models are not compliant with the RFP requirements.

We deny the protest.

The various processors in the RFP were identified by Hope part numbers. The RFP also contained a detailed statement of work which listed salient characteristics outlining the 2Air Force's requirements for the processors. One requirement was that the processors contain a "leaderless material transport system." The statement of work also stated that "all processing shall meet the film manufacturer's ideal specifications for processing times, wash times, turbulence, temperatures, replenishment and recirculation rates,

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and drying times as specified in Eastman Kodak Publication Z122, catalog No. 1029719."

Award was to be made to the low, technically acceptable offeror. However, since this was a follow-on buy, the RFP provided a "duplication of costs" evaluation factor which would be added to the price of any offeror other than Hope to recognize the duplicative costs that would be involved in this award.

A total of four proposals were received by the closing date of May 26, 1989. One proposal was submitted from Kreonite, two proposals from Hope (based on different model numbers), and one proposal from another offeror. Kreonite's technical proposal was evaluated by the Air Force's photographic technical team consisting of engineers, equipment specialists, and technicians, who found it compliant with the RFP requirements. The team noted that, prior to the issuance of the RFP, it had accepted Kreonite as a qualified source to compete for the Air Force processor requirements. Further, the team obtained information from other Air Force activities which had used both Hope and Kreonite processors and found that these other activities reported the companies' processors were considered "very comparable and neither would be considered superior to the other either in performance, construction, or quality."

Given this technical evaluation and since Kreonite's offer was low even with the addition of the "duplication of costs" evaluation factor, the Air Force awarded Kreonite the contract on June 27, 1989, thus prompting Hope's protest to our Office. Hope contends that Kreonite's models were inferior to Hope's models because the Kreonite models allegedly failed to meet the salient characteristic requiring a "leaderless material transport system" and because the Kreonite models do not meet the "ideal processing characteristics of Eastman Kodak Company."

Hope argues that Kreonite's models do not embody a "leaderless material transport system" since the Kreonite models admittedly utilize a small tab (or leader) on the front end of a film roll. In reply, the Air Force contends that a "leader is a material several feet long that attaches both to the beginning and the end of the film" and that since the Kreonite system, which uses a much smaller tab, does not contain such a long leader, the Kreonite system should, therefore, be considered leaderless. Further, the Air Force points out that an Eastman Kodak representative confirmed the Air Force's view that a leader type transport system is one which has a leader running completely through the roller system. In contrast, a leaderless system, the Kodak

representative agreed, is self-threading through many rollers, but may require a stiff leader tab. Finally, the variety of technical literature submitted by the Air Force and Kreonite establish that this small tab does not constitute a "leader" and, therefore, the Kreonite models can be considered "leaderless." Therefore, while there are some differences in design between the two manufacturers' products, these differences are immaterial and do not affect the ability of the product to meet the RFP requirements.

Next, Hope argues that the Kreonite models cannot be said to meet the film manufacturer's "ideal" specifications. It is true that the RFP requires compliance with certain "ideal" performance characteristics contained in "Eastman Kodak Publication Z122, catalog No. 1829719." However, to support its argument that Kreonite does not meet "ideal" specification, Hope only makes reference to various characteristics in Kodak literature, other than those listed in Kodak Publication Z122, e.g., ability to utilize rapid access paper. Hope has not specified any instances where Kreonite's processor fails to comply with Kodak Publication Z122. Since the Air Force, as noted above, has evaluated the Kreonite models and found them in compliance with the only RFP-referenced Kodak literature and because Hope has not specifically shown where Kreonite's models do not comply with the specific Kodak literature, we find no merit to this ground of protest.

Finally, Hope argues that it could have offered less expensive models if Hope had known that proposals would be judged only on compliance with the expressly listed requirements. However, we find that Hope should have reasonably known that proposed models would be determined to be acceptable if they complied with the list of specification requirements, noted above, rather than with any unlisted characteristics of the Hope models referenced in the RFP schedule. Even though the RFP did not contain a "brand name or equal product clause," the listing of the salient characteristics and the "duplication of costs" evaluation factor made it clear that "equal" products could be accepted. Indeed, Hope offered an alternate product. Under the circumstances, Hope should have known that it was free to offer the models other than those specified in the RFP schedule, so long as the models complied with those RFP's list of express requirements. See Pace, Inc., B-193877, Dec. 31, 1979, 80-1 CPD ¶ 2, where we concluded that a specified brand name manufacturer should have reasonably known from a reading of the solicitation that it

was not limited to submitting the specified brand name product, even though the solicitation did not, as here, contain a brand name or equal clause.

We deny the protest.



James F. Hinchman  
General Counsel